IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1665 OF 1996

1. Tata Housing Development Company Ltd., a company incorporated under the provisions of the Indian Companies Act, 1913 and having its registered office at Bombay House, 24, Homi Modi Street, Bombay - 400 001.

2. Mr.Sharokh Ardeshir Sabavala of Bombay Indian Inhabitant having his office at Bombay House, 24, Homi Mody Street, Bombay 400 001. .. Petitioners

Vs.

1. The State of Maharashtra,

2. Controller of Accommodation, having his office at Office of the Controller of Accommodation, Barack No.8, Free Press Journal Marg, Bombay - 400 032.

3. The Accommodation Officer, having his office at the Office of the Controller of Accommodation, Barrack No.8, Free Press Journal Marg, Bombay 400 032.

4. Mr.R.P.Khot of Bombay, Indian Inhabitant residing at Flat No.307, B Wing Aradhana Co-operative Housing Society Ltd., Naigaum, Bombay 400 014. .. Respondents

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S/Shri Percy D. Ghandy with R.J.Majra i/b Wadia Ghandy & Co. for the petitioners.

Shri R.J.Mande, AGP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 13TH SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. By this petition, the petitioners seek an appropriate writ, order or direction declaring that the order of requisition passed in or about October 1985 in respect of Flat No.307, situated at B-Wing, Aradhana Co-operative Housing Society Ltd., G.D.Ambekar Marg, Naigaum, Mumbai, is null and void. The petitioners also seek a declaration that Section 9(1A)(b) of the Bombay Land Requisition Act, 1948 is arbitrary, and therefore, illegal and null and void. The petitioners further seek a declaration that the said flat stands derequisitioned and therefore, the said flat be handed over to the petitioners.

FACTS:

2. Brief facts of the case are as under:-

. The petitioner No.1 is a company incorporated under the provisions of the Indian Companies Act, 1913 and had engaged in the business of developing and constructing buildings. The respondent No.1 is the State of Maharashtra, which had requisitioned the said Flat No.307, more particularly described in paragraph-1 hereinabove, and had allotted the same to the Commissioner of Police, pursuant to the requisition order dated 23rd September, 1954. The Supreme Court in the case of **Grahak Sanstha Manch & Ors. v. The State of Maharashtra,** reported in 1995(1) Bom.C.R. 295 directed the State Government to derequisition the premises which were requisitioned earlier and specific time was granted to comply with the said order. In view of the said decision of the Supreme Court, the present writ petition was filed by the petitioners seeking an order of quashing the order of requisition passed by the respondents in October, 1985 and further seeking vacant possession of the premises from the Government. However, in the meantime, the Maharashtra Government amended the provisions of Bombay Rent Act and declared that an allottee of the Government would be a deemed tenant of the premises. In view of the amendment, the

petitioners challenge the validity of the said amendment of Section 9(1A)(b) of the Bombay Land Requisition Act, 1948.

3. The Supreme Court in the case of **Welfare Association A.R.P., Maharashtra & Anr. v. Ranjit P.Gohil & Ors.,** reported in AIR 2003 SC 1266 upheld the validity of the said amendment which was made in the Rent Control Act. Learned counsel appearing on behalf of the petitioners submitted that though the validity of the amended Act was upheld in the facts and circumstances of the present case, respondent No.4 would not get benefit of the amended provisions and therefore, he cannot be treated as deemed tenant under the said provisions.

4. The short point which falls for our consideration is whether the order of allotment is protected by the Amendment Act of 1996 to the Bombay Rent Act. The Maharashtra Rent Control Act, 1999, by virtue of Section 7(2), defines the word "Government allottee". Section 27 of the said Act grants protection to such government allottee in whose favour the premises were requisitioned or continued to be under requisition and he is deemed to be a tenant under the Maharashtra Rent Control Act, 1999,

hereinafter referred to as "the said Act". The aforesaid provisions were challenged in this Court. Thereafter, the Supreme Court in the case of **Welfare Association (supra),** confirmed the judgment and order delivered by this Court and upheld the validity of the said Section 7(2)(a)(b), and Section 27 of the said Act.

5. Learned counsel appearing on behalf of the petitioners submitted that the ratio of the said judgment is not applicable to the facts of the present case as the respondent No.4, who was initially impleaded as respondent No.4, viz. M.A.Khan, retired and left the premises before the date mentioned in Section 27 viz. 7th December, 1996. Learned counsel therefore submitted that by virtue of the flat being vacated by the said Shri Khan, who was occupying the premises on the date on which the Maharashtra Rent Control Act, 1999 and the aforesaid provisions came into force, the Government continued to be in occupation thereof and therefore, the provisions of Bombay Land Requisition Act, 1948 will be applicable to the facts of the present case. It is submitted that therefore, the order of requisition dated 23rd September, 1954 is liable to be quashed and set aside and the Government may therefore be directed to hand

over vacant possession of the flat in question. He invited our attention to Section 7 and Section 27 of the said Act and submitted that Section 7(2)(b) clearly indicates that in respect of residential premises, the allottee would only be a living person which can be seen from the wording of the said clause as it refers to a person or his legal heir. He submitted in the circumstances that, in any case the allotment could not have been made in favour of the police department.

6. The short question which falls for our consideration is whether the word "person" which is used in Section 7(2)(b) refers to a living person and whether the ratio of the judgment in **Welfare Association's case (supra)** would be applicable to the facts of the present case.

7. In our view, the submissions made by learned counsel appearing on behalf of the petitioners cannot be accepted. In order to appreciate the contention raised by learned counsel for the petitioners, it is necessary to have a look at the relevant provision. Section 7, sub-clause (2) which defines the word "Government Allottee", reads as under:-

"7(2) "Government allottee",-

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any Department or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the 7th December, 1996, being the date of coming into force of the bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, were in their occupation or possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which were allotted by the State Government

for residential purpose to any person and on the 7th December, 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, such person or his legal heir was in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

8. Similarly, Section 27 of the said Act which gives protection to a person in whose favour final order of requisition has been passed reads as under:-

"27. State Government or Government allottee to become tenant of premises requisitioned or continued under requisition.

(1) On the 7th December, 1996, that is the date of coming into force of the Bombay Rents, Hotel and Lodging Houses Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, (hereinafter in this section referred to as

"the said date"),-

(a) the State Government, in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to in sub-clause (a) of clause (2) of section 7; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (2) of section 7,

shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June, 1996, or in any order of eviction issued by the Competent Authority, or by the Appellate Authority, under the Bombay Land Requisition Act, 1948, be deemed to have become, for the purpose of

this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provision of this Act, nothing in this section shall affect,-

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in section 16 or in any other section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increase under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such

tenant to the landlord is determined under sub-section (1);

(c) the operation and the application of the other relevant provisions of this Act in respect of such tenancy."

9. From the aforesaid two Sections, it is very clear that the word "Government allottee" has been classified in two categories viz. in respect of the premises which are requisitioned for non-residential purposes and secondly, for residential purposes. Section 7(2)(b) refers to "allotment" which is made in respect of the premises which are used for residential purposes. It is not possible to give a restricted meaning to the word "person" used in the aforesaid Section. It is well settled principle of law that if any term or word is not defined in the said Act, then the definition of the said term or word, which is to be found in the General Clauses Act, will have to be taken into consideration. The word "person" under Section 3(42) of the General Clauses Act, 1897 reads as under:-

> "3(42) "person" shall include any company or association or body of individuals, whether incorporated or not;"

10. From the said definition, it can be seen that the word "person" does not necessarily mean a living person but also includes an artificial person. The contention of learned counsel appearing on behalf of the petitioners that the word "person" means a living person alone cannot be accepted. Secondly, it will have to be seen from the aforesaid two Sections that whether the term "Government allottee" which is used in the context of Section 7(2)(b), means only a person/Corporation, other than the government department or not? In our view, on a conjoint reading of Section 7(2)(b) and Section 27 of the said Act, it cannot be said that the Government is precluded from making an allotment of residential premises in favour of one of its departments. There is definitely no bar provided under the aforesaid two Sections to restrict the meaning of the term "Government allottee" to mean only a private individual and not the department. In the present case, the petitioners in paragraph 2 of their petition have made a categorical and specific averment that pursuant to requisition order dated 23rd September, 1984, the Commissioner of Police was

allotted the requisitioned premises. The said averment is again reiterated in paragraph 7 of the petition. Though it is claimed by the petitioners that the entire record which was in their possession was destroyed in a fire and it was a duty of the Government to produce the said order of requisition. In our view, the fact remains that in view of the said categorical statement, which is made in paragraphs 2 and 7 of the petition, the Government had requisitioned the premises in favour of Commissioner of Police, who in turn had given the premises to one of its officers from time to time. In view of this averment, we have no hesitation in holding that since the allotment is made in favour of the Commissioner of Police, he is equally protected by virtue of Section 27 of the said Act and is deemed to be a tenant within the meaning of the said provisions of law. There is one more reason why the submission of learned counsel appearing on behalf of the petitioners regarding the interpretation which is sought to be given to the term "person" cannot be accepted. If Section 7(2)(b) is read carefully, it can be seen that it visualises and contemplates allotment which is made either to a living person or to an artificial person. At two different places, the words "‘any person’ or ‘legal heirs’, as the case may be", have been used. This

further establishes that the Legislature did not intend to use the word "person" in the context of a living person alone.

11. Under these circumstances, the submission of learned counsel appearing on behalf of the petitioners cannot be accepted. The decision in the case of **Welfare Association (supra)** is squarely applicable to the facts of the present case and as such, the petitioners will have to approach the appropriate court and seek appropriate remedy as per the opinion of the relevant Act.

12. Even otherwise, even if the the contention of the petitioners, that the premises were requisitioned in favour of Shri M.A.Khan, officer from the office of the Commissioner of Police, and on his retirement, he vacated the premises after December, 1996, and as such the department had no right to continue to remain in possession, is accepted, even then a remedy of the petitioners will be to approach the appropriate court or the authority under the Act for the purpose of obtaining a decree for peaceful possession of the flat on the ground that the subsequent allottee is illegally in possession of the premises. Without expressing anything on merits of the matter in respect

of the contention of the petitioners regarding the allotment of the premises either in favour of the Commissioner of Police or in favour of Shri M.A.Khan, retired officer of the Commissioner of Police, since the petitioners claim that the records which were in their possession have been destroyed in fire, liberty is granted to the petitioners to approach the appropriate Court under the Rent Act for the purpose of obtaining a decree for peaceful possession of the flat in question.

13. In the result, therefore, there is no substance in the submissions made by learned counsel appearing on behalf of the petitioners. The petition is hereby dismissed. The rule is discharged with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)